

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 618 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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M C BHATT

Versus

BADURDDIN PIRBHAI

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Appearance:

Shri K.I.Shah, Advocate, for the Appellant - complainant (absent).

Shri D.J.Bhatt, Advocate, for Opponent No.1 - accused.

Shri M.A.Bhukari, Additional Public Prosecutor for Opponent No.2 - State.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 16/10/96

ORAL JUDGEMENT

The judgment and order of acquittal passed by the learned Judicial Magistrate (First Class) at Surat on 12th November 1987 in P.F.A. Case No.33 of 1984 is under challenge in this appeal at the instance of the original complainant (the concerned Food Inspector) after obtaining special leave to appeal under Section 378 (4) of the Code of Criminal Procedure, 1973 (the Code for brief). Thereby the learned trial Magistrate acquitted opponent No.1 - accused of the offence punishable under Section 16 read with Section 7 of the Prevention of Food Adulteration Act, 1954 (the Act for brief).

2. It is not necessary to set out in detail the facts giving rise to this appeal. It may be sufficient to note that the complainant - Food Inspector purchased a sample of Chillies (Lal mirchi) Powder from opponent No.1 - accused in accordance with law. One part of the sample was given to opponent No.1 - accused. One part was sent by the complainant- Food Inspector to the Public Analyst at Surat. The Public Analyst found the sample to be adulterated. His report is at Exh.34 on the record of the trial. Thereupon, the concerned Food Inspector served to opponent No.1 - accused the required notice under Section 13 (2) of the Act after instituting his complaint in the Court of the Judicial Magistrate (First Class) at Surat. It came to be registered as P.F.A. No.33 of 1984. Opponent No.1 - accused appeared before the learned Judicial Magistrate and applied for sending the sample with him to the Central Food Laboratory for its analysis. Apropos one part of the sample was sent to the Central Food Laboratory at Pune. Its analysis also showed the sample to be adulterated. A copy of its report is at Exh.5 on the record of the trial. The plea of opponent No.1 - accused was recorded on 11th August 1987. He did not plead guilty to the charge. He was thereupon tried. After recording the prosecution evidence and after recording the further statement of opponent No.1 - accused under Section 313 of the Code and after hearing arguments, by his judgment and order passed on 12th November 1987 in P.F.A. No.33 of 1984, the learned Judicial Magistrate (First Class) at Surat acquitted opponent No.1 - accused of the offence punishable under Section 16 read with Section 7 of the Act. The complainant - Food Inspector was aggrieved thereby. He has therefore after obtaining special leave from this court invoked its appellate jurisdiction under Section 378 (4) of the Code for questioning the correctness of the aforesaid judgment and order of acquittal passed by the learned trial Magistrate.

3. Learned Advocate Shri K.I.Shah for the appellant

is not present. I am however required to proceed with the case on merits in view of the binding ruling of the Supreme Court in the case of BANI SINGH v. STATE OF U.P. reported in 1996 Supreme Court Cases (Cri.) at page 848, more particularly when the prosecution agency is represented by learned Additional Public Prosecutor Shri M.A. Bhukari in this appeal.

4. Learned Additional Public Prosecutor Shri Bhukari for opponent No.2 - State has taken me through the evidence on record in support of his submission that the learned trial Magistrate was in error in coming to the conclusion that the prosecution could not bring the guilt home to the accused beyond reasonable doubt. It has been urged by Shri Bhukari for opponent No.2 - State that the material on record clearly established the guilt of opponent No.1 - accused at trial. As against this, learned Advocate Shri Bhatt for opponent No.1 - accused has submitted that the learned trial Magistrate has carefully scanned and scrutinized the evidence on record and has reached the correct conclusion requiring no interference therewith by this court in this appeal. Learned Advocate Shri Bhatt for opponent No.1 - accused has further urged that the view taken by the learned trial Magistrate is a plausible view and the judgment and order of acquittal calls for no interference by this court in this appeal. Learned Advocate Shri Bhatt for opponent No.1 - accused has further submitted that it transpires from the report of analysis made by the Central Food Laboratory at Pune at Exh.5 that Rule 4 (4) of the Prevention of Food Adulteration (Rules) 1955 (the Rules for brief) framed under the Act was not complied with and that would entitle opponent No.1 - accused to claim acquittal in this case.

5. I have found considerable force in the submission urged before me by learned Advocate Shri Bhatt for opponent No.1 - accused. The report of analysis by the Central Food Laboratory at Pune at Exh.5 shows that the sample of chillies powder answers the standards prescribed in the Rules and it was found to have been applied with some oil. Rule A05.05.01 in the Rules permits edible oil content to a maximum of 2 per cent by weight. What was the edible oil content in the sample has not been shown by the Central Food Laboratory at Pune in its report at Exh.5 on the record of the trial. In that view of the matter, opponent No.1 - accused has rightly earned his acquittal on account of the benefit of doubt arising from absence of a specific mention about the edible oil content in the sample.

6. Learned Advocate Shri Bhatt for opponent No.1 -accused is also on a sound footing in his submission that Rule 4 (4) of the Rules has not been complied with in the instant case and has resulted in vitiation of the report of analysis at Exh.5 on the record of the trial. It transpires therefrom that seals on the container and the outer cover were not compared with the specimen seal sent separately to the Central Food Laboratory at Pune before analysis of the sample in question. Rule 4 (4) of the Rules requires such comparison of seals before analysis is undertaken by the Central Food Laboratory. It is found to be mandatory. Its non-compliance would vitiate the report of analysis.

7. This court has taken such a view in its ruling in the case of CLEMENT CHHOTALAL CRISTIAN v. PURSHOTTAM SAVJIBHAI PARMAR reported in 1992 (1) 32 (1) Gujarat Law Reporter at page 434. It has been reiterated in the case of LAXMICHAND BHAILAL THAKKAR v. STATE OF GUJARAT reported in 1996 (1) Gujarat Law Herald at page 266. Sitting as a single Judge, the aforesaid rulings of this court are binding to me. Even otherwise, I am in respectful agreement therewith. Both the rulings are on all fours applicable in the present case. As pointed out hereinabove, there is no mention in the report regarding compliance with Rule 4 (4) of the Rules. Such non-compliance would vitiate the report at Exh.5 on the record of the trial.

8. In view of my aforesaid discussion, I am of the opinion that the learned trial Magistrate has rightly acquitted opponent No.1 - accused of the offence punishable under Section 16 read with Section 7 of the Act. His judgment and order of acquittal calls for no interference by this court in this appeal.

9. In the result, this appeal fails. It is hereby dismissed.

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